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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Via Courier

William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W., Room 222  
Washington, D.C. 20554

Re: Reply Comments of RCN Corporation Telecom Services, Inc.  
In the Matter of Implementation of the Subscriber Carrier Selection Changes  
Provisions of the Telecommunications Act of 1996 -- CC Docket No. 94-129

Dear Mr. Caton:

On behalf of RCN Telecom Services, Inc. ("RCN"), please find enclosed for filing an original and twelve (12) copies of the Comments of RCN in the above-referenced Docket. Also enclosed is a diskette containing RCN's reply comments formatted using WordPerfect 5.1.

Please date-stamp the enclosed extra copy of this filing and return it with our courier. If you have any questions concerning this filing, please do not hesitate to contact the undersigned.

Respectfully submitted,



Jean L. Kiddoo

Dana Frix

Pamela Arluk

Its Counsel

Enclosures

cc: Joseph Kahl  
Cathy Seidel (CCB)  
Formal Complaint Branch (CCB)  
ITS

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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20054

In the Matter of )  
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Implementation of the Subscriber Carrier )  
Selection Changes Provisions of the )  
Telecommunications Act of 1996 )  
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Policies and Rules Concerning )  
Unauthorized Changes of Consumers' )  
Long Distance Carriers )

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CC Docket No. 94-129

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**REPLY COMMENTS OF  
RCN TELECOM SERVICES, INC.**

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Dated: September 29, 1997

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CC Docket No. 94-129

**REPLY COMMENTS OF RCN TELECOM SERVICES, INC.**

RCN Telecom Services, Inc. and its operating subsidiaries (collectively "RCN"), by its undersigned counsel and pursuant to the Federal Communications Commission's ("Commission's" or "FCC's") August 14, 1997 Public Notice, hereby submits these Reply Comments on the Further Notice of Proposed Rule Making and Memorandum Opinion and Order on Reconsideration in the above-referenced proceeding.<sup>1</sup>

**I. THE COMMISSION SHOULD CLARIFY THAT ITS PRESUBSCRIBED CHANGE RULES ARE INTENDED TO PREEMPT INCONSISTENT STATE RULES**

RCN again urges the Commission to clearly state that the presubscribed carrier ("PC") change rules adopted in this proceeding are intended to have nationwide applicability and would therefore, preempt inconsistent state rules. Although the State Public Utility Commissions ("PUCs") certainly have an important role in enforcing the Commission's prescribed rules, it would be detrimental to the

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<sup>1</sup> *In the Matter of Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996, Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, Further Notice of Proposed Rule Making and Memorandum Opinions and Order on Reconsideration, CC Docket No. 94-129 (rel. July 15, 1997) ("NPRM").

public interest to have a multitude of inconsistent rules, which is quickly becoming the current environment. For example, as Frontier identified in its comments (at 8), a number of states have recently enacted legislation addressed at slamming, others have adopted slamming regulations or practices that are inconsistent with the federal rules, and others have been relying on state statutes to address slamming. Although PUCs have a legitimate interest in protecting its consumers, it is contrary to the public interest to have potentially 51 different sets of PC-change rules, which well overrides any positive effect in having the PUCs enact their own unique rules.

Section 258 of the 1996 Telecommunications Act plainly gives the Commission the power to adopt substantive regulations governing changes in preferred carriers. Indeed, section 258 requires carriers to submit and execute a PC-change *as the Commission shall prescribe*, and gives the states the power to enforce, but not to prescribe such different procedures. Moreover, preemption of state PC-change regulations furthers the public interest because of minimization of costs that would result from the requirement of multiple procedures for the same carrier change action. These costs would eventually be passed on to consumers in higher costs for telephone service, which would be detrimental to the public.

In addition, differing procedures for PC-changes would also be confusing for customers that operate in various states. For example, RCN gave the example in its initial comments of a nationwide business that desired to change its telephone provider.<sup>2</sup> Without Commission preemption, that customer could be required to execute multiple LOAs and or verifications because of the differing rules of the varying jurisdictions in which it is operating. Perhaps more importantly, multiple and differing PC rules would result in a patchwork of practices and procedures that would likely confuse

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<sup>2</sup> RCN Comments at 3.

consumers and carriers alike. As a result, consumer choice would be frustrated as carriers work out among themselves the complexities of whether a given practice cooperates with federal law, state law, and the incumbent carrier's interpretation of both.

Finally, the state commissions have not put forth any compelling reason against FCC preemption of PC-change rules except to say that they have considered the slamming issue and are interested in protecting their consumers. For example, the California Public Utilities Commission states that it has substantial experience with the issue of slamming and has implemented a comprehensive and effective anti-slamming program.<sup>3</sup> While it is valuable that the California Public Utilities Commission has expended considerable time and energy, it puts forth no reason as to why an FCC nationwide program could not be just as effective in preventing slamming in California as the program it currently has in place. No state has shown any reason why it is so unique such that it requires PC-change rules different from the ones promulgated by the FCC, especially given Congress' clear mandate in Section 258 that the FCC adopt substantive regulations governing changes of presubscribed carriers. RCN is confident that the FCC is capable of adopting rules that can effectively address slamming nationwide. To allow states to adopt their own unique rules would only dilute the effectiveness of the Commission's rules and would cause a significant increase in costs to carriers and ultimately, consumers.

## **II. THE COMMISSION SHOULD ALLOW WELCOME-PACKAGES TO BE USED IN A RESPONSIBLE MANNER**

RCN agrees with the carriers who advocate retaining the welcome package, but modifying the manner in which it is able to be used by carriers. Although the welcome package, when used to

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<sup>3</sup> CPUC Comments at 2-4.

confirm telemarketing orders without requiring any affirmative written response from the customer could possibly become a vehicle for slamming, welcome packages can offer an important method of imparting information to customers and allowing carriers to solicit a written LOA. For example, RCN agrees with WorldCom and AT&T that a welcome package should be able to be used if the customer is required to return a signed LOA before his or her service is switched.<sup>4</sup> The commenters that have argued against the welcome package are concerned with the negative option possibility of its use in switching a customer's carrier. Pursuant to RCN's plan, the negative option would be eliminated because the customer would be required to return a signed LOA. This feature ensures against slamming at least as well as third party verification of PC-changes.

However, in the case of *in-bound calls*, RCN urges the Commission to allow the welcome package to be disbursed without the return of a signed LOA. As RCN noted in its initial comments, in the case of in-bound calls, no verification should be required.<sup>5</sup> In such instances, the customer has chosen to contact the carrier to purchase a service and therefore, there is little potential for the customer confusion that can be associated with out-bound telemarketing solicitations. RCN notes that other commenters agreed that in-bound calls should not require verification. For example, AT&T states in its comments that there is no evidence in the record to suggest that slamming from in-bound calls is at all a problem.<sup>6</sup> Indeed, the evidence compiled in the earlier phase of this proceeding suggests that, requiring verification for in-bound calls would only penalize honest carriers and inconvenience customers who are attempting to choose a new carrier.

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<sup>4</sup> AT&T Comments at 7; WorldCom Comments at 8.

<sup>5</sup> RCN Comments at 5.

<sup>6</sup> AT&T Comments at 30-31.

However, RCN agrees with WorldCom that the Commission should grant one exception to its rules for inbound calls. An ILEC that is both the submitting carrier and the executing carrier should be required to obtain verification of a PC-change.<sup>7</sup> This requirement is necessary because of the monopoly environment currently in place for local exchange services. The ILECs' existing residential customers cannot be deemed to have selected the ILEC as their service provider because there have been no competitive options available. Accordingly, the Commission should adopt tougher in-bound verification rules when an ILEC is both the submitting and the executing carrier.

### **III. THE COMMISSION MUST ENSURE THAT INCUMBENT LECs ARE NOT ABLE TO USE THESE RULES IN AN ANTICOMPETITIVE MANNER**

RCN agrees with the other interexchange carriers who note that the Commission must take steps to ensure that the ILECs are not able to use the PC-change rules in a manner that stifles competition. In the current environment, it is the ILEC that will execute the vast majority of PC-changes. It would be all too tempting for the ILECs to use that position of power to their unfair advantage without some serious safeguards by the FCC.

#### **A. Executing Carriers Should be Prohibited from Performing Verification of Submitted Orders**

RCN wholeheartedly agrees with AT&T and other interexchange carriers that allowing executing carriers to require verifications could seriously undermine competition.<sup>8</sup> For example, an ILEC could significantly delay a carrier change order and use the excuse that it was simply verifying the PC-change. This would be detrimental to competition and would be contrary to the public interest by keeping customers tied to the ILEC. Accordingly, the Commission should adopt rules that

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<sup>7</sup> See WorldCom Comments at 8-9.

<sup>8</sup> See AT&T Comments at 2-3; Frontier Comments at 16-17.

prohibit the executing carriers from performing such verifications.

**B. Executing Carriers Must be Prohibited from Using Their Position as an Opportunity to Market Services to the Switching Customer**

RCN also concurs with MCI's concern that the ILECs may use their position as executing carrier as an attempt to "win back" their customers or otherwise market their services to customers switching to another carrier. MCI notes that during its test period for local market entry, some of MCI's new local resale customers were sent a letter indicating that the requested switch of local carriers had been made, but which contained a phone number that the consumer was urged to call to have their service switched back to the ILEC.<sup>9</sup> The Commission should declare any such contact illegal. Specifically, the Commission should prohibit any communication between an incumbent LEC and a customer who has requested a PC-change, including any type of "win back" or retention letter or a phone call. This prohibition should be in place until a reasonable amount of time has passed since the submitting carrier received notification that the switch has been made.

**C. Incumbent LECs Should be Prohibited From Soliciting or Enforcing PC-Freezes for Local and IntraLATA Services Until Six Months After They Become Subject to Competition**

RCN is also in agreement with CompTel's arguments that the ILECs could potentially use PC-freezes to stifle competition.<sup>10</sup> Therefore, the Commission should institute a moratorium in which an ILEC would not be permitted to solicit or enforce PC-freezes for local and intraLATA services until six months after they become subject to competition. This or similar rules are necessary to ensure that ILECs do not use PC freezes to as a tool to retain their monopoly control. As CompTel

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<sup>9</sup> MCI Comments at 7-8.

<sup>10</sup> See CompTel's Comments at 7-8.



notes, there is evidence that incumbent LECs are currently using PC-freezes in that manner.

On an additional note, RCN is concerned that there is an industry standard definition of what constitutes a PC-freeze. Currently, each ILEC writes its own rules concerning how a customer can “unfreeze” his or her telephone number. Thus, in a multicarrier environment, this issue is ripe for confusion and will enable unscrupulous ILECs to adopt practices and procedures which make it virtually impossible to implement a customer’s choice in preferred carriers. Indeed, it is currently possible for a given RBOC to adopt different freeze rules in each of the states in which it operates. This inhibits the ability of competing carriers to effectively market region-wide and will frustrate consumer choice. RCN believes that the Commission must adopt clear and concise regulations in this and all other PC areas.

#### **IV. THE COMMISSION SHOULD REQUIRE NOTICE TO CUSTOMERS WHEN A RESELLER CHANGES UNDERLYING CARRIERS ONLY WHERE THE RESELLER HAS MARKETING USING THE NAME OF THE UNDERLYING CARRIER**

RCN reiterates its support for the Commission’s proposal to require notification of a reseller’s change in underlying carrier only when the reseller has clearly marketed the underlying carrier to its customer. As RCN noted in its initial comments, requiring resellers to notify customers of a change in its underlying carrier would more likely confuse subscribers than be useful to customers. Such a requirement would also be extremely burdensome and costly to the resale carrier and serve to thwart competition. As IXC Long Distance stated in its comments,<sup>11</sup> resellers are routinely and constantly changing underlying carriers based primarily on rates. Moreover, most carriers in today’s market utilize multiple underlying carriers. To impose a requirement on resale carriers that their customers

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<sup>11</sup> IXC Long Distance Comments at 6.

be notified whenever an underlying carrier change is made would most likely cause resellers to substantially restrict, if not eliminate, carrier selection changes. This would detrimentally effect the consumer by depriving end users of the lowest possible rates.

**V. IN THE EVENT OF SLAMMING, BOTH THE PROVIDING CARRIER AND THE CUSTOMER SHOULD BE MADE WHOLE**

As advocated by numerous commenters, RCN again states its view that customers should not be permitted the option of non-payment of charges for outstanding balances in the event of an alleged slam.<sup>12</sup> Such a rule would provide the unattractive incentive for customers to falsely claim that they were slammed. This type of fraud would result in harm to law-abiding customers through the higher rates that would occur because of the increased level of free telephone service being provided to dishonest customers.

However, RCN agrees with the Commission and other commenters that it is very important to ensure that the slamming carrier does not gain any revenue from its unlawful act and that both the customer and the authorized carrier are made whole. To this end, RCN urges the Commission to adopt rules which require the unauthorized carrier to: (i) refund to the subscriber any amount paid over what would have been charged by the preferred carrier; and (ii) refund to the preferred carrier all other revenues received from the subscriber. As RCN stated in its initial comments, this approach deters slamming, makes all injured parties whole, and does not create an incentive for customers to improperly allege slamming.

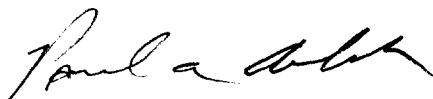
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<sup>12</sup> See CompTel Comments at 11-12; Cable & Wireless Comments at 8-10; MCI Comments at 19; Sprint Comments at 27-30.

## VI. CONCLUSION

For the foregoing reasons, RCN respectfully requests that the Commission act in accordance with the recommendations provided herein.

Respectfully submitted,



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